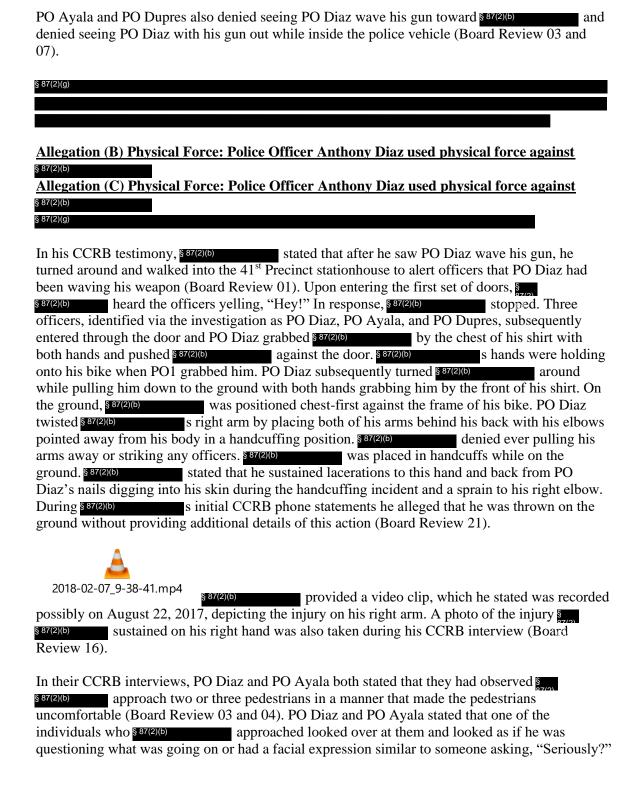
CCRB INVESTIGATIVE RECOMMENDATION

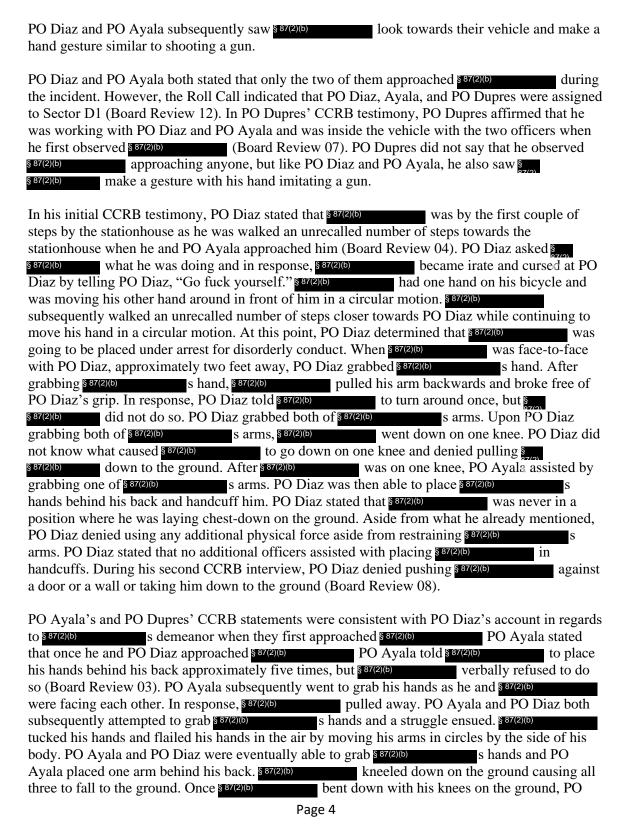
Investigator:		Team:	CCRB Case #:	\square	Force		Discourt.	☐ U.S	S.
Patrick Yu		Squad #16	201707745	Ø	Abuse		O.L.	☑ Inji	ıry
Incident Date(s)	ident Date(s) Location of Incident:		•	Precinct: 18 Mo. SOL		Mo. SOL	EO S	OL	
Monday, 08/21/2017 1:58 PM		41st Precinct stationhouse			41	2/	/21/2019	2/21/2	2019
Date/Time CV Reported		CV Reported At: How CV Reported:			Date/Time Received at CCRB				
Tue, 09/12/2017 8:05 AM	9/12/2017 8:05 AM IAB		Phone		Tue, 09/19/2017 12:28 PM				
Complainant/Victim	Type	Home Address							
Subject Officer(s)	Shield	TaxID	Command						
1. POM Anthony Diaz	18508	933743	041 PCT						
2. POM Abel Dupres	13626	963498	041 PCT						
Witness Officer(s)	Shield N	o Tax No	Cmd Name						
1. POM Efrain Ayala	00285	934314	041 PCT						
2. SGT Gelvis Loraespinal	03358	948238	041 PCT						
Officer(s)	Allegatio	n			Inve	stiga	tor Recon	nmenda	tion
A.POM Anthony Diaz	Abuse: P	olice Officer Anthony D	Diaz drew his gun.						
B.POM Anthony Diaz	Force: Police Officer Anthony Diaz used physical force against § 87(2)(b)								
C.POM Anthony Diaz	Force: Police Officer Anthony Diaz used physical force against § 87(2)(b)								
D.POM Anthony Diaz	Force: Po	olice Officer Anthony Desired s breathing.	iaz restricted (b) (b)						
§ 87(4-b), § 87(2)(g)									

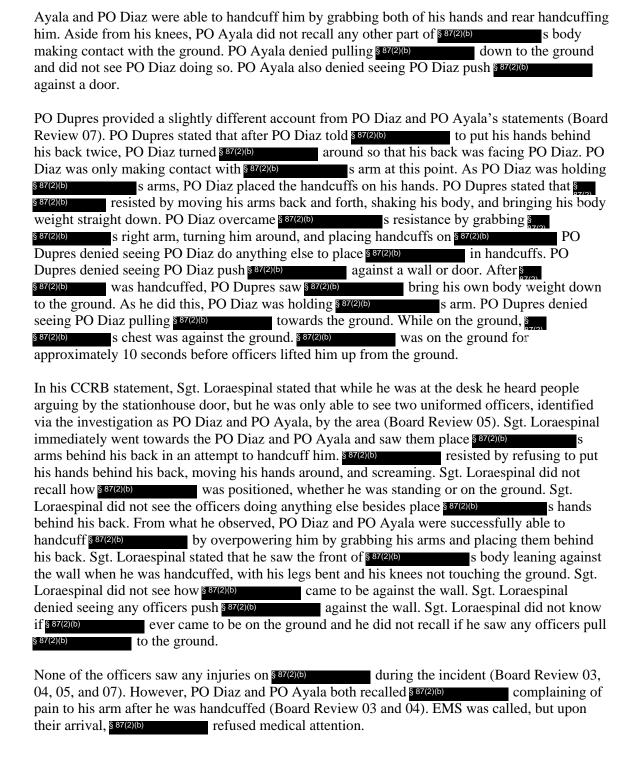
Case Summary

On September 12, 2017, \$87(2)(b) filed this complaint with IAB. The CCRB received this case on September 19, 2017.
On August 21, 2017, at approximately 1:58 p.m., \$87(2)(b) was standing outside of the 41st Precinct stationhouse when he saw PO Anthony Diaz and PO Efrain Ayala sitting inside their vehicle looking at him while PO Diaz waved his gun (Allegation A: Abuse of Authority, PO Diaz, PO Ayala, and PO Abel Dupres subsequently approached and arrested \$87(2)(b) During the arrest, PO Diaz allegedly grabbed \$87(2)(b) by the chest of his shirt and pushed him against a door (Allegation B: Physical Force, \$87(2)(b) also alleged that PO Diaz subsequently pulled him down to the ground, causing him to be positioned face-down on top of his bike (Allegation D: Physical Force, \$87(2)(b) PO Diaz allegedly applied pressure to \$87(2)(b) s back, causing his breathing to be restricted (Allegation D: Force, \$87(2)(b) \$87(2)(b) was released with a disorderly conduct summons.
§ 87(4-b), § 87(2)(g)
There is no video footage capturing this incident. However, [867(2)(b)] provided a video recording he took of himself which depicts an injury he sustained on his right arm (Board Review 16).
Findings and Recommendations
Allegation (A) Abuse of Authority: Police Officer Anthony Diaz drew his gun. § 87(2)(9)
Allegation (A) Abuse of Authority: Police Officer Anthony Diaz drew his gun.
Allegation (A) Abuse of Authority: Police Officer Anthony Diaz drew his gun. \$\frac{87(2)(0)}{87(2)(0)}\$ stated that while he was standing in front of the 41st Precinct stationhouse he was observing a vehicle accident that occurred in front of the stationhouse and was also looking at various items outside the stationhouse (Board Review 01). As he was observing all of the aforementioned things, he noticed an officer in the driver seat, identified via the investigation as Ayala, and an officer in the front passenger seat, identified via the investigation as PO Diaz, looking at him as they were sitting inside a marked police vehicle. As the vehicle made a turn, PO Diaz waved his gun by moving his gun up and down while the gun was pointed in the direction of the windshield. \$\frac{87(2)(0)}{2}\$ described the color of the gun as black.

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In the 41 st Precinct Command Log, Sgt. Loraespinal wrote that \$87(2)(b) sustained a hand injury (Board Review 13). During his CCRB interview, Sgt. Loraespinal did not recall making that notation and denied seeing any injuries on \$87(2)(b)
In the Threat Resistance and Injury report, which documents whenever officers use force, prepared by PO Diaz, it was noted that a forcible take down was used, but there was no notation of the reason force was used (Board Review 11). During his second CCRB interview, PO Diaz explained that the forcible take down was in reference to street being handcuffed and that street had one knee on the ground (Board Review 08). He stated that this notation of force used was not in reference to anything else. Additionally, he stated that he did not know why there was no notation of why force was used, but clarified that what is noted in this section of the TRI report is accurate and that there were no additional reasons for why force was used aside from \$\frac{87(2)(0)}{2}\$ not following commands to place his hands behind his back.
was issued a \$87(2)(b) summons as a result of this incident (Board Review 10). \$87(2)(b), \$87(2)(a) 160.50
On \$87(2)(b) , \$17(2)(c) was arrested for assault at the location of the Bronx (42 nd Precinct stationhouse) under similar circumstances to what the officers observed during this incident (Board Review 14). In the arrest report, it was noted that \$187(2)(b) was yelling at the victim for no reason, causing annoyance, and then punched her in the face.
A document request to the 41^{st} Precinct stationhouse for the Medical Treatment of Prisoner form was returned with a notation that the document was not on file at the 41^{st} Precinct.
s discharge papers for his visit to \$37(2)(5) indicate that he was diagnosed with a sprain to his right elbow (Privileged Documents). The investigation was unable to obtain \$37(2)(5) s medical records to confirm the extent of his injuries and any statements he made in regards to how he sustained the injuries.
All of the officers stated that they did not see PO Diaz using any additional force other than grabbing \$87(2)(6) s arms and placing them behind his back. PO Diaz also denied using any additional force. Contrary to what is noted in the TRI report prepared by PO Diaz, in his CCRB testimony, PO Diaz denied taking \$87(2)(6) down to the ground. Moreover, all of the officers, besides Sgt. Loraespinal, provided consistent accounts in regards to seeing some part of \$87(2)(6) s making contact with the ground. However, only PO Dupres stated that he saw \$87(2)(6) place himself chest down on the ground after he had been placed in handcuffs.
§ 87(2)(g)
Page 6

alleged that while he was face-down on the ground lying on top of his bike, PO Diaz placed his hands behind his back and placed him in handcuffs (Board Review 01). As he was being placed in handcuffs, PO Diaz applied pressure towards an unknown area of he back, pushing his chest against the frame of his bike in a manner that restricted his breathing. Surgio Could not further describe this action. Surgio Assumed that it was PO Diaz who restricted his breathing because he did not recall PO Ayala or PO Dupres tated the could not breathe more than once. He did not recall if any of the officers said anything in response. During a follow up call. Surgio did not know how long his breathing was restricted and he could not tell how long PO Diaz applied the pressure for (Board Review 02). Moreover, Surgio Stated that he was on the ground for approximately one or two minutes before he was stood up. Surgio Surg	Allegation (D) Force: Police Officer Anthony Diaz restricted \$87(2)(b) s breathing.
was being placed in handcuffs, PO Diaz applied pressure towards an unknown area of back, pushing his chest against the frame of his bike in a manner that restricted his breathing. Bright back, pushing his chest against the frame of his bike in a manner that restricted his breathing back, pushing his chest against the frame of his bike. PO Diaz who restricted his breathing because he did not recall PO Ayala or PO Dupres doing anything during the handcuffing process. In response, buring a follow up call, Bright did not know how long his breathing was restricted and he could not tell how long PO Diaz applied the pressure for (Board Review 02). Moreover, Bright did not know how long his breathing was restricted and he could not tell how long PO Diaz applied the pressure for (Board Review 02). Moreover, Bright did not know how long his breathing was restricted and he could not breathe as he was on the ground for approximately one or two minutes before he was stood up. Bright did not know how long his breathing was restricted with his sworn CCRB testimony (Board Review 01 and 21). Aside from Sgt. Loraespinal, none of the officers interviewed stated that they heard complain that he could not breathe as he was being placed in handcuffs (Board Review 03, 04, 05, and 07). Additionally, all of the officers denied seeing PO Diaz applying pressure to sock or otherwise restrict his breathing. In his CCRB testimony, PO Diaz stated that Bright did not recall whether society was never lying on his chest (Board Review 04). Additionally, PO Diaz denied doing anything to restrict society was ever positioned on top of his bike. PO Diaz denied doing anything to restrict society as a preathing. PO Diaz stated that aside from grabbing society and provided his not provided as a proposition of society and provided his	alleged that while he was face-down on the ground lying on top of his bike, PO
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PO Dupres stated that after \$87(2)(5) was placed in handcuffs he saw \$87(2)(5) lying chest-down on the ground for approximately 10 seconds before PO Diaz and PO Ayala lifted him up from the ground (Board Review 07). PO Dupres stated that \$87(2)(5) In his CCRB statement, Sgt. Loraespinal stated that he did not know if \$87(2)(5) was ever on the ground and did not recall if he was lying on top of his bike (Board Review 05). Sgt. Loraespinal stated that he heard \$87(2)(5) complain that he could not breathe as he was	· · · · · · · · · · · · · · · · · · ·
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hair a accepted to the front deals in headouffe Cat I are coninct denied bearing CO7/07/0	
	being escorted to the front desk in handcuffs. Sgt. Loraespinal denied hearing \$87(2)(b)
make this complaint prior to this. Sgt. Loraespinal stated that one or two officers were holding	make this complaint prior to this. Sgt. Loraespinal stated that one or two officers were holding

onto \$87(2)(b) s arm when he made this complaint; he denied seeing any of the officers making any additional physical contact with \$87(2)(b)
Sgt. Loraespinal's account in regards to savent complaint that his breathing was restricted was not corroborated by any of the officers or by savent and savent complaint. Sgt. Loraespinal only saw one or two officers holding savent same when he heard him make this complaint.
§ 87(2)(g)
§ 87(4-b), § 87(2)(g)
Civilian and Officer CCRB Histories
 This is the first CCRB complaint filed by \$87(2)(b) (Board Review 17). PO Diaz has been a member of the NYPD for 14 years and has had four prior CCRB complaints in two cases. None of his previous allegations were substantiated and \$87(2)(g) PO Dupres has been a member of the NYPD for less than a year and has had no prior CCRB complaints pleaded against him.
Mediation, Civil and Criminal Histories • \$87(2)(b) rejected mediation during his CCRB interview. • As of November 21, 2017, \$87(2)(b) has not filed a Notice of Claim in regards to this incident (Board Review 18). • \$87(2)(b), \$87(2)(c)
Squad No.:

Investigator:			
	Signature	Print Title & Name	Date
Squad Leader:	Signature	Print Title & Name	Date
Reviewer:			·
	Signature	Print Title & Name	Date